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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF SAN BERNARDINO,
Plaintiff and Respondent,

v.

ELENA GROSS,
Defendant and Appellant;

TIMOTHY GROSS,
Real Party in Interest and
Respondent.

E070189

(Super.Ct.No. CSSS1001023)

OPINION

APPEAL from the Superior Court of San Bernardino County. John A. Crawley, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Vacated and remanded with directions.

Elena Gross, as pro. per., for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Linda M. Gonzalez and Ricardo Enriquez, Deputy Attorneys General, for Plaintiff and Respondent.

No appearance for Real Party in Interest and Respondent Timothy Gross.

Defendant and appellant Elena Gross¹ appeals the January 23, 2018 order denying her request for sanctions against the County of San Bernardino Department of Child Support Services (department)² and its attorney, Elizabeth Lawrence (Lawrence), and for removal of Lawrence from the case. She contends the Honorable John Crawley, Commissioner, lacked jurisdiction to hear the matter as a temporary judge because she objected to him prior to the start of the hearing. The department acknowledges Elena's objection and asserts the commissioner only had the authority to hear the matter, make findings of fact, and prepare a recommended order pursuant to Family Code section 4251, subdivision (c).³ The department offers no opposition to vacating the order and remanding the matter with directions for Commissioner Crawley to make findings of fact and a recommended order. We remand the matter with directions.⁴

¹ We will refer to the parties by their first names for simplicity and clarity. No disrespect is intended.

² The department is the local child support agency tasked with providing child support enforcement services in San Bernardino County. (Fam. Code, § 17304.)

³ Further statutory references are to the Family Code.

⁴ Because resolution of Elena's first issue requires a remand, her claim the trial court abused its discretion in denying her requests is moot.

I. PROCEDURAL BACKGROUND AND FACTS⁵

A. *Brief History.*

On December 2, 2010, Elena was ordered to pay \$420 a month in child support. Effective December 1, 2016, her child support order was reduced to zero. Since then, she has resisted the department's efforts to enforce the child support arrears, which accrued before her order was reduced to zero. (*Gross II*, E060475.) Underlying many of her contentions has been her assertion that her former husband, real party in interest and respondent Timothy Gross, has an ongoing obligation to pay her \$1,128 a month pursuant to a sponsorship agreement he executed in 2001 in connection with her immigration to the United States from South Africa (Riverside judgment). (*Gross III*, E067856/E068766.) However, it has been adjudicated that Timothy no longer has any such obligation. (*Gross II*, E060475.)

B. *Elena's Current Request for Order.*

On November 3, 2017, Elena filed a request for order (RFO) seeking sanctions under section 271 against the department and Lawrence for their alleged failure to provide assistance to settle a separate matter, the Riverside judgment. Elena also alleged (1) her bank accounts were improperly levied, (2) the department's refusal to withdraw

⁵ We grant the department's request that we take judicial notice of our prior unpublished opinions involving Elena's challenges to the child support order and enforcement thereof. (See *County of San Bernardino Child Support Division v. Gross* (July 23, 2013, E054457) [nonpub. opn.] (*Gross I*); *Gross v. Gross et al.* (Aug. 6, 2015, E060475) [nonpub. opn.] (*Gross II*); and *County of San Bernardino v. Gross* (*Gross*) (Sept. 12, 2018, E067856/E068766) [nonpub. opn.] (*Gross III*).) (Cal. Rules of Court, rule 8.1115(b)(1).) The factual background section is taken from our prior opinions.

the levies constituted a refusal to meet and confer with her, and (3) the department wrongly refused to provide her with Timothy's current and former employers' contact information. Elena requested sanctions in an amount equal to the "entire child support obligation."

On November 6, 2017, Elena filed an objection to any commissioner hearing her request for sanctions, along with another RFO to stay the department's child support enforcement efforts and to remove Lawrence from the case "with instructions to never contact Timothy." She claimed the department's enforcement actions were harassing and legally improper.

On December 22, 2017, the department filed its objection to Elena's requests and denied her allegations. The department justified its failure to assist in settling the Riverside judgment and its failure to provide Timothy's current and former employers' contact information. Regarding the bank levies, the department stated that the California Department of Child Support Services issues the levies pursuant to section 17453, and the financial institutions provide notice as required by section 17456, subdivision (b). The department objected to Elena's request to remove Lawrence from the case, and it denied harassing her through its enforcement actions.

On January 9, 2018, Elena filed a notice accusing the department of failing to confer regarding her RFOs. She asked the trial court to strike the department's response because it was not filed on a Judicial Council form. She also claimed the department frustrated her ability to settle the Riverside judgment by providing Timothy with her RFOs.

C. The Hearing.

On January 16, 2018, Commissioner Crawley denied Elena's request for a continuance and her objection to having any commissioner hear her matter. He noted that the parties had appeared before the court numerous times, "so the objection to my hearing the matter is untimely."⁶ Commissioner Crawley then denied Elena's motions, and the department prepared an order after hearing, which was filed on January 23, 2018.⁷

II. DISCUSSION

Elena contends the court (Commissioner Crawley) abused its discretion in denying her objection to any commissioner hearing her request for sanctions under section 271.

We agree.

Section 4251 provides that all proceedings initiated either by the local child support agency seeking to establish, modify, or enforce child support orders, and all proceedings initiated by a party other than the local child support agency seeking to modify or enforce a support order "shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional

⁶ The minutes from the hearing provide the following: "The parties, this includes Ms. Gross, signed a Stipulation on 12/02/10 that states [i]t is stipulated between the undersigned attorneys and/or parties that said Commissioner shall hear the within action sitting as a Temporary Judge until the final determination thereof. It is further stipulated that said Commissioner shall, by this signed document, be vested with the authority to hear any new proceedings in this case, whether contested, or uncontested, as a Temporary Judge."

⁷ On September 6, 2018, we reserved ruling on Elena's request for judicial notice of the appellant's opening brief in case No. E063790. The request is denied.

circumstances.” (*Id.*, subd. (a).) The commissioner “shall act as a temporary judge unless an objection is made” by any party. (*Id.*, subd. (b).) The court is required to advise parties “prior to the commencement of the hearing that the matter is being heard by a commissioner” who is acting “as a temporary judge unless any party objects to the commissioner acting as a temporary judge.” (*Ibid.*) If a party objects, “the commissioner may hear the matter and make findings of fact and a recommended order.” (*Id.*, subd. (c).) Within 10 court days after that, “a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is in error. In both cases, the judge shall issue a temporary order and schedule a hearing de novo within 10 court days.” (*Ibid.*)

Here, prior to the commencement of the hearing on her request for sanctions, Elena objected to the matter being heard by a commissioner. However, Commissioner Crawley denied her objection, heard the matter, and issued an order. Elena challenges the denial of her objection. Because her challenge requires the interpretation of the applicable law and the original stipulation, we apply the de novo standard of review. (*Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Cal.App.4th 1028, 1035 [“Questions of law, including application and interpretation of statute, are reviewed de novo. [Citation.]”]; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166 [“construction of the instrument is a question of law, and the appellate court will independently construe the writing”].)

Elena originally stipulated to having a commissioner act as a temporary judge. (*Gross III*, E067856/E068766.) However, we conclude her original stipulation to

Commissioner Crawley does not extend to the sanctions hearing. (*Orange County Dept. of Child Support Services v. Superior Court* (2005) 129 Cal.App.4th 798, 807-808.)

“Upon stipulation of the parties, a court commissioner is empowered to adjudicate a ‘cause’ until its final determination. [Citation.] The determination of a cause encompasses subsequent proceedings that are its ‘direct progeny,’ but not those considered ‘ancillary’ to the stipulated cause. [Citation.] Direct progeny are those which are a continuation of the stipulated cause or question its finality, such as motions to vacate or reconsider. [Citations.] An ancillary proceeding, on the other hand, is heard on a separate record and seeks an independent judgment or reviewable order. [Citation.] A contempt hearing, while related to the cause out of which it arose, is nonetheless considered ancillary to the cause and outside the scope of the parties’ original stipulation to a temporary judge. [Citation.] Because ‘[t]he parties have the power to define and circumscribe the authority of a temporary judge,’ stipulations to a temporary judge are narrowly construed. [Citation.]” (*Id.* at p. 807.)

According to the original stipulation, Elena agreed that the commissioner shall be vested with the authority to hear any “new proceedings” in this case as a temporary judge. However, we interpret “new proceedings” narrowly to include only those subsequent proceedings that are the direct progeny of the stipulated cause. (*Orange County Dept. of Child Support Services v. Superior Court, supra*, 129 Cal.App.4th at p. 807.) While Elena’s sanction proceeding arose out of, and is related to, the department’s contempt hearing, it does not attack the contempt judgment but seeks a separately reviewable order. Thus, “it is outside the scope of the stipulation the parties

entered into when the contempt hearing began. In this context, however, the distinction makes no practical difference. Family Code section 4251, subdivision (c) provides that a child support commissioner ‘may hear the matter and make findings of fact and a recommended order’ even if a party objects to him or her acting as a temporary judge. Although a judge must later review the order and entertain any objections to it by the parties, the record will contain the commissioner’s subjective findings.” (*Orange County Dept. of Child Support Services v. Superior Court*, at p. 807.)

III. DISPOSITION

The order denying sanctions is vacated. The matter is remanded to the trial court with directions that Commissioner Crawley make the necessary findings of fact and prepare a recommended order. Appellant is awarded costs on appeal.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.